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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LINK #52

CIVIL MINUTES - GENERAL

Case No.	CV 07-1029 PSG (VBKx)	Date	Aug. 19, 2008
Title	Vladimir Yovev v. United States Dep't of Health and Human Services, et al.		

Present:	The Honorable Philip S. Gutierrez, United States District Judge
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Wendy K. Hernandez	Not Present	n/a
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiff(s):

Attorneys Present for Defendant(s):

Not Present

Not Present

Proceedings: (In Chambers) Order on Plaintiff's "Objection to the Court's Decision of June 10, 2002"

I. Background

Vladimir Yovev ("Yovev"), representing himself, brought a lawsuit against the United States Dept of Health and Human Services (the "U.S.") and numerous other defendants. In his complaint, Yovev appeared to state claims for violations of his constitutional rights, among other claims. However, there were many problems with his complaint, and after considering several motions to dismiss, the Court allowed Yovev to file a First Amended Complaint. Yovev filed his First Amended Complaint on July 25, 2007. The defendants who had been provided notice of the First Amended Complaint again moved to dismiss, and the Court granted the defendants' motion on October 16, 2007.

Then, on December 21, 2007, the Court issued an order to show cause ("OSC") to Yovev that ordered him to show that he was prosecuting his lawsuit by serving his First Amended Complaint on the remaining defendants. Yovev failed to adequately respond to the OSC, and additionally, Yovev never provided sufficient evidence to show that he had served his First Amended Complaint on the remaining defendants. For these reasons, the Court dismissed Yovev's lawsuit, without prejudice, on June 10, 2008.

Then, on July 22, 2008, Yovev filed a document that he titled "Plaintiff's Objection to the Court's Decision of June 10, 2002." Though not clear, it appears that this document was intended to serve as a motion for reconsideration of the Court's dismissal order. However, on August 8, 2008, Yovev also filed an appeal of the Court's June 10, 2008 order to the Ninth

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Circuit.

II. Discussion

Yovev appears to asks that the Court reconsider its June 10, 2008 order, despite Yovev's appeal of the Court's order to the Ninth Circuit. "[A]s a general rule, a district court is divested of jurisdiction once a notice of appeal has been filed." *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 654 (9th Cir. 1991) (citation omitted). However, in *Morris*, the Ninth Circuit also noted that "when a district court attempts to correct a 'clerical error' under Federal Rule of Civil Procedure 60(a) after a notice of appeal has been filed, and the correction does not represent a change of position, but rather simply clarifies the court's intended action, 'a remand to effectuate that intent is a matter of 'mere form.' ... Courts should not employ the rule to defeat this purpose by 'inducing needless paper shuffling.'" *Id.* at 654-55. Thus, the Ninth Circuit allowed the district court to clarify its original order pursuant to FRCP 60(a) despite the notice of appeal. *Id.* at 655.

Here, Yovev's objection to the Court's order does not request the correction of a mere clerical error and instead requests that the Court reconsider its reasoning for the dismissal. Because of Yovev's appeal, the Court may not reconsider its June 10, 2008 order. Thus, Yovev's objection or motion for reconsideration is MOOT.

IT IS SO ORDERED.

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